



COMMUNITY DEVELOPMENT DEPARTMENT

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PLANNING COMMISSION MEETING MINUTES

REGULAR MEETING

MAY 25, 2004

PRESENT: Acevedo, Benich, Engles, Escobar, Lyle, Mueller, Weston

ABSENT: None

LATE: None

STAFF: Planning Manager (PM) Rowe, City Attorney (CA) Leichter, and Minutes Clerk Johnson

Chair Mueller called the meeting to order at 7:01 p.m., with Commissioner Lyle leading the salute to the flag.

DECLARATION OF POSTING OF AGENDA

Minutes Clerk Johnson certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

OPPORTUNITY FOR PUBLIC COMMENT

Chair Mueller opened the public hearing.

Brian Schmidt, 3924 E. Bayshore, Palo Alto, representative of the Committee for Green Foothills, said he was speaking to a matter related to that of an agenda item, but not contained within the item this evening. Mr. Breon explained that during the appeal of the Temporary Use Permit (TUP) for the Institute Golf Course and Mathematics Conference Center to the City Council, both City staff and the City Council members had appeared to agree that a parcel of this size was inappropriate for issuing a TUP. As a result of discussion regarding the matter, City staff had been directed to begin the process for changing the Ordinance. Mr. Breon requested that the Commissioners ask staff the status of the progress on that project.

PM Rowe responded that the text revisions are 'in process, but about a month away from presenting the data to the Planning Commission and the City Council'.

CA Leichter remarked this is not a simple revision of a TUP, but a total revision of the Ordinance.

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Mr. Schmidt indicated that he had concerns regarding the TUP for this project relating to Code Enforcement, as well. Mr. Schmidt said he had filed a complaint with Code Enforcement last summer, that the golf course was operating without permit, but had not heard back from City Staff as to what actions had been taken against the Institute.

CA Leichter said she and Mr. Schmidt had had two or three conversations about this matter. CA Leichter explained that the TUP had been executed and in-place monitoring of the environmental measures were part of that TUP. "Absolutely the TUP is in place," she declared.

Commissioner Weston asked if the allegation is that the golf course (only) is of environmental concern, or the buildings as well?

CA Leichter said she was trying to remember – it may be just environmental concerns relating to the golf course.

With no others present indicating a wish to address matters not appearing on the agenda, the public hearing was closed.

MINUTES:

MAY 11, 2004

The following modifications were offered for the May 11, 2004 minutes:

Page 16, paragraph 3: Morgan Hill Community Health ~~Commission~~ Foundation, as well as being on the ~~Board of Directors~~ Citizen's Advisory Board of Directors of O'Conner Hospital for consultation to the DePaul ~~Hospital~~ Health Center

Page 17, paragraph 7: (correct) Commissioner Acevedo commented that the staff report appears to view Morgan Hill Ranch as similar to this project; he stated it look as if that staff was trying to ascertain if the Commissioners intend viewing the two projects uniformly for uses of this nature.

Page 18, paragraph 2: (add) By consensus, the Commissioners agreed to add the words "such as" to the water courses example in the parentheses, thereby resolving any confusion or misinterpretation.

Page 18 paragraph 4: points *allotments*

**Page 19 paragraph 10: ~~and certainly didn't want to do a two year~~
....having a *small* and after "rate" insert "and"
on the *large*.....**

add [end of sentence] to reduce costs

Page 20, paragraph 5: [add at end] *The consensus of the Planning Commissioners was that a project had to have completed a phase or at least pulled 50% of the building permits for a phase by 9/30/04 in order to be considered for an on-going project set-aside.*

No decision was reached approving the minutes as there was a question on item 3 (Oakwood Country School). The Clerk was directed to review the tapes of the meeting to ascertain whether the location of the parking lot was given and report back.

CONSENT CALENDAR:

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Chair Mueller announced that the matter of Housing Type Distribution & Term For FY 2004-05 Measure "C" Competition (FY 2006-07 Building Allotment) was being pulled from the consent calendar.

OLD BUSINESS

1) HOUSING TYPE DISTRIBUTION & TERM FOR FY 2004-05 MEASURE "C" COMPETITION (FY 2006-07 BUILD- ING ALLOTMENT)

PM Rowe presented the staff report, noting the revised Resolution No. 04-51, indicating the reduction in numbers of units to ~~45~~ 75 and calling attention to Section 2D containing the following modification:

(add) project....***and must have completed a phase or at least pulled 50 percent of the building permits for a phase by 9/30/04***

PM Rowe further called attention to Exhibit A noting this would provide for going to a full two year competition and that also there would now be allowance for the Downtown set-aside to be carried to the second year. PM Rowe explained that the Downtown plan would not be completed until late summer or early fall.

Commissioner Weston was excused at 7:14 p.m., as he has a potential conflict in the matter.

PM Rowe discussed the revised Resolution, saying that, as presented, the Exhibits A and B would pertain to a two-year competition.

Commissioner Benich commented if the Commissioners decide to proceed with the two-year competition, then it would allow more time for developers to put together developments for the Downtown competition.

PM Rowe agreed that is the case, in view of the Downtown set aside, and reminding that the vertical mixed use can be used Downtown also.

Chair Mueller opened the public hearing.

Dick Oliver, 275 Saratoga Ave., #105, Santa Clara, said he is in favor of the resolution if the competition is changed to a two-year cycle. Mr. Oliver said that in speaking with the Commissioners at the prior meeting, he had not had time to read, nor clearly understand the one- year competition. "The two-year competition provides adequate opportunity for completion of the Downtown Plan and can accomplish the City Council goals. Primarily the amount of work that needs to go into the process results in time that can be saved by a two-year competition, as it really lessens the time of staff involvement, and also gives the Subcommittee an opportunity to fine tune the recommendations for Measure C," Mr. Oliver stated. He then spoke about the on-going projects he has, saying ~~all three have 15~~ *one project has 20 units and two others have 12 units* for on-going ~~(one has 12)~~, as he presented the difficulties for three units to be obtained: the developers would have to go through the full competition unless there is a two-year competition. Mr. Oliver said that with a two-year competition, the City Council, staff, the Planning Commission – everyone - all would be better served *to possibly only get three units*.

With no others indicating a wish to speak to the matter, the public hearing was closed. Commissioners discussed the matter, giving preferences as follows:
Lyle expressed support for a two-year competition, saying one of the 'driving forces'

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of Measure C, was the pledge to reduce cost, and “This would reduce costs,” he declared

Commissioner Benich originally was in favor of only a one-year competition, but with the Downtown set aside, he had been swayed to a two-year competition.

Commissioner Acevedo came from the ‘other side’, noting that a couple of years ago the developers wanted more frequent competition. We know that there are added costs for submitting year-to-year, but this is part of the Measure E-P-C process. He also said he remembered hearing that, at least in the first year, the process would have a shakeout identifying needed changes to the evaluation process.

Commissioner Escobar said that while Mr. Oliver presents sound reasoning, he sees a ‘flip side’, and wondered if one of the Commissioners would always have to step down [no] leaving a ‘couple of novices on the dais’, as he declared it would be beneficial to have a one-year competition to ‘flush out issues and help the Commissioners’.

Commissioner Engles favored a one-year competition, thinking it important as the cost of property is very high and a developer must tie up land and this would be detrimental.

Chair Mueller commented that he hears the shake out arguments; however, he thought the two-year competition would be more beneficial. The tendency to lean to two-years he said, is fundamentally based on the amount of staff time required.

Commissioners discussed the staff time issue in detail.

Commissioner Lyle also called attention to potential problems with the criteria and the revisions which may be required. He noted that projects often have trouble getting started; but with a two-year, any ‘bugs could be worked out’ and they could be started in the second year, eliminating the need for extensions.

Commissioners also discussed the issues involved with ‘borrowing’ allocations from future competitions, as well as the impediments dealing with the criteria.

Chair Mueller called attention to the busy agenda, and suggested continuing the matter until later.

COMMISSIONER LYLE OFFERED (REVISED) RESOLUTION 04-51, INCLUDING EXHIBIT A WITH THE FOLLOWING MODIFICATIONS:

Section 2 D:and must have completed a phase or at least pulled 50 percent of the building permits for a phase by 9/30/04

G: ~~2007-08~~ 2008-09

and

Exhibit A: On-Going projects 75 45

COMMISSIONER ESCOBAR, NOTING THE FINDINGS AND CONDITIONS CONTAINED WITHIN THE RESOLUTION, SECONDED THE MOTION, WHICH CARRIED WITH THE FOLLOWING VOTE: AYES: BENICH, ESCOBAR, LYLE, MUELLER; NOES: ACEVEDO, ENGLER; ABSTAIN:

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NONE; ABSENT: WESTON.

Commissioner Weston returned to the meeting at 7:30 p.m.

NEW BUSINESS:

2) SD-04-01/

DAA-03-10:

COCHRANE-

COYOTE ESTATES

A request for amendment to an approved development agreement and a 44-lot subdivision for Phases 8 through 10 of the 7.2-acre Coyote Estates development. The amended Development Agreement would cover a total of 69 building allocations. The project site is located on the north side of the intersection of Cochrane and Peet Roads, on both sides of Peet Road, in the R-1 (12,000)/RPD zoning district

PM Rowe gave the staff report and detailed adjustment to:

Resolution No. 04-52 as follows:

Standard Conditions, page 11: XIII B *add* Painted Feather Drive

Resolution No. 04-53 (Development Agreement)

Page 6 (h) (ii) *add*floor space *or fraction thereof*....

Exhibit "B"

V. OBTAIN BUILDING PERMITS

The number of permits shall be obtained as follows:

FY 2004-05 15 permits by 9-30-04

FY 2005-06 15 permits by 3-31-05

and

(first full paragraph)....Building Permit ~~six (6)~~ three (3)

PM Rowe further stated that the double-fee timeline payment should be eliminated.

Chair Mueller opened the public hearing.

Dick Oliver, 275 Saratoga Ave., #105, Santa Clara, the applicant, asked the Commissioners to look at page 2 of the Standard Conditions and delete the requirement for item B (CC&Rs), as he has no control over long-established HOAs. The Commissioners agreed. Mr. Oliver also recalled recent discussions with the Commissioners regarding the 'lag time' in having plan checks completed by the City and asked that language 'to the extent (the required information was) not previously provided by developer' be included.

Commissioner Lyle asked if Mr. Oliver could meet the schedule as suggested by staff?

Mr. Oliver responded he was 'OK' with it, as he would have to resubmit for the additional five units to cover the map not previously submitted.

PM Rowe responded to a question from Mr. Oliver regarding the methodology for establishing the number of BMRs per phase of the project.

With no one else present to speak to the matter, the public hearing was closed.

PM Rowe told Commissioners that the staff actually goes back to verify upgrades, so he could not agree with Mr. Oliver's suggested language addition. Each project, he explained, has a Planner working on them and as Planning Manager, he will have the

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Planner meet with the applicant(s) if any problems arise.

COMMISSIONER ACEVEDO OFFERED RESOLUTION 04-52, APPROVING A 44-LOT, SINGLE-FAMILY RESIDENTIAL SUBDIVISION ON A 12.276-ACRE PORTION OF A PARCEL LOCATED BETWEEN COCHRANE ROAD AND EAGLE VIEW DRIVE ON PEET ROAD, INCLUDING THE FINDINGS AND CONDITIONS AND WITH THE FOLLOWING MODIFICATIONS:

Standard Conditions

Page 2: Delete item B

Page 11: XIII B add Painted Feather Drive

COMMISSIONER ESCOBAR SECONDED THE MOTION, WHICH CARRIED WITH THE UNANIMOUS VOTE OF ALL COMMISSIONERS PRESENT.

COMMISSIONER ACEVEDO MOTIONED TO APPROVE RESOLUTION 04-53, RECOMMENDING APPROVAL OF AN AMENDMENT TO DEVELOPMENT AGREEMENT APPLICATION, DAA-03-10 FOR APPLICATION MP 02-14: COCHRANE-COYOTE ESTATES, WITH THE FINDINGS AND CONDITIONS SO LISTED, AND WITH THE FOLLOWING MODIFICATIONS:

Page 6 (h) (ii) addfloor space *or fraction thereof*....

Exhibit "B"

VI. OBTAIN BUILDING PERMITS

The number of permits shall be obtained as follows:

FY 2004-05 15 permits by 9-30-04

FY 2004-05 15 permits by 3-31-05

and

(first full paragraph)....Building Permit ~~six-(6)~~ three (3)

COMMISSIONER LYLE SECONDED THE MOTION, WHICH CARRIED BY THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLER, ESCOBAR, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

OLD BUSINESS:

Chair Mueller announced Agenda Items 3 and 4 would be discussed concurrently.

**3) REVIEW OF
FINAL EIR FOR
THE INSTITUTE
GOLF COURSE**

Review of the Final Environmental Impact Report for the Institute Golf Course and Mathematics Conference Center located at 14830 Foothill Avenue in Morgan Hill. The Final EIR incorporates responses to comments received on the Draft EIR and contains the mitigation measures required to reduce the project impact to less than significant levels.

**4) ZA-03-03:
FOOTHILL-THE
INSTITUTE**

A request to amend and expand the existing Planned Unit Development zoning and to create a precise development plan for the operation of an 18-hole private golf course on approximately 192 acres and to replace an existing 58,946 square foot restaurant building with a new 58,550 square foot office, conference center and library for the American Institute of Mathematics. The project is located at 14830 Foothill Avenue on the east side of Foothill Avenue opposite East Middle Avenue. An Environmental Impact Report (EIR) has been prepared for the project. Environmental mitigation

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measures and findings of overriding consideration will be adopted.

Chair Mueller disclosed that he has had ex parte meetings with the applicants and asked other Commissioners if they had had same? The Commissioners responded that they had not recently met with the applicants and if they had done so, it had generally been a one-time event.

PM Rowe presented the staff report explaining how the item was divided up. First, he said, the purpose is to receive comments on the zoning proposal, and not the final EIR, as there have been many opportunities to speak to the EIR, so participants were asked to concentrate on the proposed zoning change. If there should happen to be a need to have other changes, then a special meeting would be called next Tuesday (June 1, 2004) and the completed documents would be presented at that time.

PM Rowe introduced Consulting Attorney, Roger Beers, 2930 Lakeshore Ave., Oakland, who is working with CA Leichter. Also present in the audience were: City Manager Tewes, Deputy Director of Public Works (DDPW) Bjarke, and Senior Engineer (SE) Creer.

PM Rowe provided an overview of the project: The application deals with the continued use of the updated golf course and maintenance building. In the plans are intention for demolition of the former restaurant and construction of the Institute, lecture halls, and a caretaker residence. Before the Commissioners at this meeting, PM Rowe explained, was the request to rezone the property from Open Space to Planned Unit Development. He reminded that the project was originally built without a permit from the City. The EIR, PM Rowe said, describes and gives the probability of those environmental features before the building occurred and the EIR also gives information on various aspects of the project.

PM Rowe introduced the City's consultants for the project: Michelle Yesney, Demetri Loukas, (both of David Powers and Associates, 1885 The Alameda, #204, San Jose); Daniel Stephens, of H.T. Harvey and Associates, 3150 Almaden Expressway, Suite 145, San Jose; and Norman Hanzsche, 1220 Brickyard Cove Rd., Suite 206, Point Richmond.

Commissioner Acevedo asked, "After this, will a new use permit be required?"

PM Rowe explained, "No, the zoning change, and the PUD will eliminate need for a use permit."

Commissioner Acevedo noted that formerly, the concern had been about the environment, but the data presented tonight speaks mainly to the golf operations.

PM Rowe told of the inclusion of the conditions for golf usage, 36 holes, etc., and not open to the public, nor using the course for charity play.

Ms. Yesney said her firm had assisted the City with the review of the EIR, then proceeded to explain the EIR process and purpose, noting the study of the environmental effects of the proposal, and making suggestions for alternatives.

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Ms. Yesney identified the mitigation measures, saying that all recognized are accounted for except loss of farm land. Ms. Yesney explained that at the time of the DEIR, the applicant was in negotiation with The U.S. Fish and Wildlife, so the items regarding the need for mitigation has changed in the Final EIR. She said that the drainage issues have been addressed in the more detailed drainage plans provided by the project proponent.

Ms. Yesney detailed the acreage needed to mitigate/replace 51 acres of serpentine soils needed according to The U.S. Fish and Wildlife. She told where the mitigation acres are available (Kirby Creek area - 35 acres) which are 'very high quality.' Because of the exceptional quality of the Kirby Creek area habitat, the 35 acres of serpentine soils would be equivalent to the purchase of 51 acres of serpentine soils purchased elsewhere. This 35 acres would also provide habitat for California Red-legged frog and the tiger salamander, however, an additional ~~16.5~~ 16.2 acres of replacement habitat would need to be purchased for the protection/ replacement of red-legged frogs and tiger salamander habitat lost on the project site.

Chair Mueller asked if the place at Kirby Creek is bought, would that provide the mitigation?

Ms. Yesney said that another ~~16.5~~ 16.2 acres would be required; however, the 35 acres would provide mitigation for the loss of serpentine land.

Ms. Yesney then presented information on the following:

- mitigation of water (citing Corralitos Creek) where the applicant is asking an exception from the required 30-foot setback from of the center of the creek (6th fairway) Ms. Yesney said because of the topography, this plan would benefit drainage
- riparian habitat
- trees planted along Foothill Avenue
- irrigated turf to waters edge,
- pond drainage to Foothill Avenue
- hole 12 irrigation for pond D
- setbacks (In the final EIR, City staff asked for a biologist to see if rigid set backs can be avoided; suggested mitigation is for setbacks to be reduced to 25 feet. Ms. Yesney tells how to adjust areas of golf course to make the use of fertilizers, etc., more efficient and effective: If the setback area already slopes from creek or can be graded, the setback could be reduced to 30-feet)
- the necessity at the 3rd fairway for removal of fill from the creek channel
- need to reconfigure green 2 with almost 100 feet of riparian habitat
- idealized pond mitigated setback
- vegetated shelf in golf course ponds
- design integrated with other than turf – compatible with setback areas
- water supply (Ms. Yesney distinguished three approaches):
 1. reduce water to predevelopment area
 2. detailed groundwater investigation if significant decline in ground water, reduce water use if impacted
 3. use recycled water problematic as not reliable source of recycled water
- newly planted trees (appear to eventually block views of hills. CA Leichter

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said that private property plantings in the City require plans or the typical uses are subject to review. This will be subject to review if the City Council chooses to make it a requirement of zoning.)

The U.S. Fish and Wildlife Service has jurisdiction for riparian protection, and the tiger salamander.

Commissioner Acevedo asked about the data on hole 6, where an exception to the buffer is discussed. He noted that the applicant says he is in possession of a revised letter indicating approval by the US Fish and Wildlife Service. (None of the Commissioners nor the staff has seen the letter.) Commissioner Acevedo asked if this would be treated as new information – and then what?

Lengthy discussion followed:

PM Rowe said it is new information if it has not been seen before. The City, he said, has not received anything that indicates different information than was reported at this meeting.

CA Leichter stated that if information was presented, it may be that would trigger a supplemental review of the EIR.

Further discussion ensued regarding the possible difference in the final EIR if additional information (such as an official agreement) was received.

Ms. Yesney interjected that the purchase of the acreage for mitigation hasn't happened.

Mr. Beers explained that the City may have to in the future have a finding of equivalency.

PM Rowe discussed with Commissioners the table in the staff report of proposed uses, noting that the action would be to adopt the precise plan and proposed uses of the facilities. "The PUD is all the documents together," he noted. PM Rowe explained the adoption by reference of the various documents presented is done according to Ordinance, not per se, such items as the length of play also charity golf are not included in the Resolution.

Commissioners asked questions regarding:

- course play
 - water usage level fluctuations
 - tree replacement/habitat loss analysis
 - extra mitigation for the red legged frogs and tiger salamanders
 - pond algae
 - onsite mitigation and offsite mitigation
 - irrigation seep loss
 - groundwater and loss of nitrogen
 - potential for recycling rain water for use in the buildings
 - redesign to enhance storm water drainage
 - limiting human access to riparian habitat: use of various types of barriers /monitoring plan
- CA Leichter noted that in the mitigation plan, riparian habitat

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- areas will be established, and staff will check to ensure compliance
- drainage
- numbers of bullfrogs on the site, need for – and method of - mitigation
- drainage issues

Chair Mueller opened the public hearing.

Stephen Sorenson , PO Box 1448, appeared on behalf of the applicant, and provided clarification of the issues raised by the City's Consultants, and responding to each of them with the following highlights:

- offsite mitigation - is twice what is required
- The U.S. Fish and Wildlife mitigation letter – if the applicant completes the requirements for relief on hole 6, there will be a letter of agreement from the U.S. Fish and Wildlife formalizing the agreement
- VTA was to be the negotiator with Castle and Cooke for the acreage mitigation at Kirby Creek; this attempt failed and the applicant was told by The U.S. Fish and Wildlife to go directly to the owners. Mr. Sorenson assured the Commissioners there is intent to obtain the property, but just recently got into it and will work on it.

Discussion ensued with the Commissioners, City Staff, and Mr. Sorenson participating in the following issues:

- whether The U.S. Fish and Wildlife has accepted the plan presented by the applicant
- if new information is being presented (Mr. Sorenson insisted that all information has been presented to City staff)
- water testing/lack of presence of increased nitrates
- no detection in water of pesticides/chemicals in the greens areas which are most heavily maintained. He said studies show that these are varying layers of sand and gravel, so effective filter – to clean the water on site
- verification that wells in the local area show that the golf course operation has no effect on those wells, but recent
- rainfall had the most effect on well levels
- trees
- ponds – numbers, sizes, locations
- bullfrog counts
- CHAMP plan (chemical application)
- water monitoring
- need for and amount of turf (8 acres) to be eliminated [swale removal on hole #3 - part of the Creek Restoration Plan]

Commissioners indicated concern that there appears to be a Creek Restoration Plan which has not been presented to the Planning Commissioners.

Mr. Sorenson claimed the plan had been well circulated to The U.S. Fish and Wildlife, the Regional Water Control Board, and the Santa Clara County Water District.

Commissioner Lyle explained that the Commissioners can't meet their responsibilities if the information is not at hand nor been made available to the Consultants.

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Mr. Sorenson said there is no new information, and he is just trying to clarify what has been provided.

Commissioners discussed:

Lack of comparables for pre-and-post development

Need for verification of information from The U.S. Fish and Wildlife

CA Leichter said the data Mr. Sorenson has identified is new information, as it is not on her copy list.

Consulting Attorney Beers explained that 'new information' is clearly defined in the study of an EIR: for the legal requirement, it must be new info of significance or the mitigated measure was not thought to be feasible before, but it is now. "Since this process has been ongoing for several years, the question becomes: what to do with information that comes in at the last minute - if it is new information, how much weight is given to it? Do you want to take time to have that information reviewed by the Consultants? What weight is given when there is not a requirement to respond at this time?" Mr. Beers explained.

Commissioner Escobar asked if the information is seen to be of significant concern, and the applicant says it can't be mitigated or has different plan, what is the result?

Mr. Beers indicated Commissioner Escobar's question is not specifically addressed in the guidelines, but the City can ask if alternate mitigation should be put into place.

Chair Mueller reminded that this public hearing for is for both the agenda items 3 and 4.

Mr. Sorenson said the applicant has submitted responses to mitigation questions and the applicant wants the Planning Commission to adopt and recommend the alternatives to the City Council.

Commissioner Lyle reiterated that the applicant says there is a plan, but it appears not to have been presented to City staff nor the Planning Commission.

Mr. Sorenson reminded that he (and Mr. Long) had talked about the Creek Restoration Plan with The U.S. Fish and Wildlife Service personnel in the second phase of mitigation and it is to be viewed as an alternative mitigation.

Commissioner Escobar asked why the plan has not been presented to the City?

Randall Long, 329 Mt. Palomar Place, Clayton, Consultant to the applicant, said the Creek Restoration Plan was given to City representatives during the second TUP hearing

PM Rowe said the Creek Restoration Plan is part of a required series of documents to be provided to The U.S. Fish and Wildlife, with the City to be provided a copy of the documents. He noted that the City has been the recipient of one of the five items requested. PM Rowe noted that the applicant provided the original plan (Creek

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Restoration Plan), but not the current draft.

Commissioner Weston, speaking to the lack of the current draft, commented that such action still raises questions of 'why not'?

Mr. Long offered clarification of 'new information' as he read from a letter in which The U.S. Fish and Wildlife staff was talking about offsite/onsite compensation, indicating they wanted nothing to do with the existing ponds, and that was in the public record, he declared. Continuing, Mr. Long said the issue of buffers came up and the applicant had 30 days to come up with the first draft plan regarding the buffers, and the Creek Restoration Plan.

Commissioner Weston asked about the referenced e-mail (which had been sent to the City and containing the information being discussed).

Mr. Long launched a discussion of the email exchange, telling the Commissioners the first was sent to the City in October, 2003, reading from his copy as to what has been agreed upon. Mr. Long told of the agreement indicated by The U.S. Fish and Wildlife for the buffer areas. "The Creek Restoration Plan is a comprehensive document, not just for The U.S. Fish and Wildlife, but looked at by all agencies involved. We got comments from the Regional Water Board, the Santa Clara County Water District and two other water districts," Mr. Long explained. "The 30-foot buffer is a requirement minimum acceptable for the filter strip."

Mr. Long also spoke on the planting of trees, noting they were supposed to be native species and declaring the applicant has attempted that with the plantings. Information about the plantings has been provided and that is not new information, he said. Mr. Long said that part of the on-site mitigation plan soon to be signed has obligated the applicant and The U.S. Fish and Wildlife to a 30-70 ft. buffer offering as another alternative and since that will be agreed upon, the applicant is asking this to be considered as a change. Mr. Long concluded his presentation by speaking to the upstream pond not being a bullfrog habitat site.

PM Rowe requested the Commissioners pause to permit staff to assess the referenced e-mails to ascertain which had been received and been responded to.

OTHER BUSINESS: *Upon resumption of the meeting, Commissioners undertook discussion of Agenda Item 5 at 10:09 p.m.*

5) SELECTION OF CHAIR AND VICE- CHAIR

Chair Mueller explained the typical policy of the Commission under which the Vice-Chair assumes the chair in rotating order under the guise of length of membership to the Commission.

Brief discussion ensued regarding when (length of time) the Commissioners had assumed their seats.

COMMISSIONER ENGLES NOMINATED COMMISSIONER WESTON TO BE CHAIR FOR THE 2004-05 YEAR. COMMISSIONER ESCOBAR SECONDED THE MOTION WHICH PASSED UNANIMOUSLY WITH THE AFFIRMATIVE VOTE OF ALL COMMISSIONERS PRESENT.

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Commissioner Weston commented that he would like a Vice-Chair who is experienced in dealing with Measure C.

COMMISSIONER ENGLS NOMINATED COMMISSIONER LYLE TO BE VICE-CHAIR FOR THE UPCOMING YEAR. COMMISSIONER BENICH SECONDED THE MOTION AND THE MOTION WAS PASSED UNANIMOUSLY BY THE COMMISSIONERS PRESENT.

RESUMPTION OF DISCUSSION OF AGENDA ITEMS 3 AND 4

The regular order of business was resumed.

PM Rowe reported that staff still needs time to research the item. He explained there are questions relating to: The U.S. Fish and wildlife Service correspondence regarding the setback and encroachment of green 6. PM Rowe stated there is no official record that the City has received copies of the correspondence indicated by the applicant's representatives.

Rich Gamboa, 14555 Foothill Ave., told Commissioners he lives directly across the street from the golf course. Mr. Gamboa raised a series of issues of concern to the neighborhood:

- 1) Presence of nitrates – conflicting information has been received
- 2) His well was tested, when he first moved in, and the nitrate level was below the unacceptable level (38mg/l). Recently, a test indicated it had risen up to 49mg/l in a 2.5 year period. He claimed the above 'acceptable level of 45' has been glossed over as questions about what happened during time of non-permitted development. Mr. Gamboa stated that even though the nitrate levels can't be predetermined as consistent for a lot of the current owners, as testing may not have been completed; there should be some mitigation for neighbors who have increased levels of nitrates.
- 3) Groundwater depletion; there needs to be a way to monitor. Mr. Gamboa suggested establishing a baseline to avoid future problems, which now exists with the nitrates.
- 4) Reduction of view from his house. Mr. Gamboa restated what Ms. Yesney told the Commissioners: 10,000 trees had been planted – and Mr. Gamboa said they were right in front of his house – which has resulted in 'now I have about half of a full (previous) view'.
- 5) Mr. Gamboa stressed he was 'not trying to stay the project, but wanted mitigation for the neighboring properties.
- 6) He said he is disappointed that he is legally not able to protect views, but certainly feels his and others property will be devalued.
- 7) Mr. Gamboa gave details of attending many neighborhood meetings and several of those with the applicant's representatives attending. We have not received a response to our concerns; nothing tangible has been offered; there appears to be a lot of lip-service, which has resulted in much skepticism.

Commissioner Acevedo solicited Mr. Gamboa's preference for an option between the tree plantings and a big netted fence? Mr. Gamboa responded that a netted fence is not practical. He continued by saying the problem seems to be a privacy issue with The Institute, as that hole nearest his property is far enough away from his property line that errant balls are not likely to be a problem.

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Commissioner Engles asked what Mr. Gamboa thinks the City could do to alleviate the nitrate issue? Mr. Gamboa said that in his case, the pattern seems to be rising nitrates, suggesting a budget for water for the neighbors be established as part of an approval for the PUD.

Keith Anderson, P.O. Box 1409, San Martin, voiced support for the staff recommendation in Exhibit "A", noting that the conditions for approval are based on maintenance of having a strong CEQA administrative record supporting it. Mr. Anderson indicated there is no record for supporting last minute alternatives (with no statement of equivalency) proposed by the applicant. Mr. Anderson called attention to the May 24 letter from the applicant. Mr. Anderson said he could disagree and partially agree with the points raised, but in looking at the alternative mitigation, there is just disagreement. "There is a table full of disagreement if one considers the alternatives, and we all need much more time to find the best solution," Mr. Anderson stated. Then Mr. Anderson called attention to one significant problem with Exhibit "A" relating to groundwater depletion (page 7) in revised category 12 groundwater depletion problem, saying this section needs revision. Mr. Anderson suggested that 12 A and B could be combined and item 12 E is mandated by the City.

Brian Schmidt, 3924 E. Bayshore, Palo Alto, representative of the Committee for Green Foothills, spoke to the commissioners regarding the applicant's failure to supply all mitigations required, as identified in the draft EIR, which he said violates CEQA requirements.

Mr. Schmidt also raised several other issues:

- Total CEQA Requirements
- Endangered species violation prior to agreement with The U.S. Fish and Wildlife requirements
- Possible Williamson Act cancellation violations /need to pay back-taxes
- The U.S. Fish and Wildlife requirement for offsite mitigation generally is three times acreage (this is 2)
- Bullfrog mitigation and presence
- Draining of ponds
- Need for recirculation of EIR if applicant's alternative mitigation adopted
- Trees on earthen berm would raise height of trees

Commissioner Engles asks about taxes and the Williamson Act. Mr. Schmidt explains that for farms, when the property takes land out of production and the use is for open space they pay less taxes because of the Williamson Act. He said that for the last 7 – 8 years the applicant has not been paying the proper amount of taxes, according to use. (Chair Mueller explains that taxes are not part of the Planning Commissioners' ability for discussion)

Craig K. Breon, 22221 McClellan Road, Cupertino, representing the Audubon Society, said if the activity can be designed so that maintenance and ongoing activity are enhancements, it would be better to have a good maintenance plan to address the issues which have been raised, thereby decreasing the risk and possibility of mistakes. Mr. Breon said there are risks when you have disputes between experts, and recommendation relying on the Government Consultant. "It is best to rely on the concerns of the

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environment. It is reasonable to resolve in favor of more caution, with emphasis on wildlife and people – that's a nice policy to set," Mr. Breon said.

Mr. Breon continued by addressing the items in the Institutes applicant's letter. Mr. Breon agreed that the Creek Restoration Plan needs to address further issues, with the inclusion of riparian issues in general. The main problem with Exhibit "A", number 12 is the amount of turf area on the golf course. In the original draft EIR, Mr. Breon said, it spoke to the issue of acre reduction and water depletion telling of the contrast and comparisons of turf areas and other landscaping areas. The wildlife tree situation is difficult, Mr. Breon said, regarding the significant visual impact, "This is not a good visual situation" urging the applicant to work with neighbors for visual practicality is important

Mr. Sorenson offered rebuttal on the points raised by Mr. Gamboa, saying the applicant has asked the neighbors to voice concerns of projects. He reported they listed three: flooding in area, nitrates, visual impact of trees. Mr. Sorenson spoke of the time and effort to address drainage and flooding. As to the nitrates, the applicant has hired Consultants to address the matter. He stated that the nitrate level of groundwater in the area started going up about 15 years ago, but started going down about 3 years ago. The trees plantings have been viewed as the least significant according to the neighbors, Mr. Sorenson reported, and the matter has not been dealt with. He explained that Randall Long canvassed the neighbors and the questions appeared to be addressed.

Commissioner Weston noticed that Mr. Gamboa mentioned groundwater depletion and asked for an analyzation of the ground water. Mr. Sorenson referenced studies which indicate that the groundwater is not being depleted.

Commissioner Lyle asked if the planned and in-place landscaping will require the same amount of water, or through the years will require less?

Mr. Sorenson said it already requires less with the drip system having been installed.

Commissioner Lyle asked if further reduction of water use could be anticipated?

Mr. Sorenson responded, "That may be."

Commissioner Acevedo called attention to the trees at hole 3, observing that the hole is right in the shooting line with the street, but it is far away, and asking what purpose the trees serve?

Mr. Sorenson replied, "Esthetics and safety."

With no others present indicating a wish to speak to the matter, Chair Mueller closed the public hearing.

Chair Mueller said the discussion should focus on two items: the EIR and mitigations.

PM Rowe told Commissioners that the correspondence received by the City does not officially document a variance of a 30-foot setback.

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Considerable discussion regarding the Creek Restoration Plan was had.

PM Rowe spoke on the need for augmentation of the document, with focus on The U.S. Fish and Wildlife areas of concern. He indicated concern that the information available does not deal with all the mitigation required.

Chair Mueller asked about the process of certification of the EIR. He also led discussion of signage versus fences and buffers in the habitat's physically sensitive areas.

PM Rowe said the Commissioners and/or the City Council could recommend modification of the physical barrier at those locations.

CA Leichter indicated that the Commissioners should tell what their concerns are, and staff will bring back responses in proper form for review and potential recommendation.

Commissioners listed the following concerns:

- need for Review of Exhibit A, with emphasis on item 12.
- monitoring plan
- acreage to be purchased
- barriers/signage
- trees
- grading
- setback at hole 3
- soil erosion
- groundwater depletion
- water table level maintenance
- offsite/onsite mitigation
- Creek Restoration Plan (because this has not been sent to the City, Mr. Beers explained that on receipt of the document, it could be reviewed for equivalency; he detailed the process/procedure for that action)

CA Leichter explains what happens if Creek Restoration Plan comes in after the EIR receives approval.

Commissioner Escobar stated, "We don't have the Creek Restoration Plan, so we can't make a decision."

Commissioner Lyle observed that not all the required mitigations have been met in the applicant's Creek Restoration Plan.

Responding to Commissioner Acevedo, CA Leichter spoke on the absence of the letter the applicant referenced from The U.S. Fish and Wildlife. "Since the letter is not in the possession of the City," CA Leichter, "we need to look at it before comment."

Chair Mueller mentioned that the PUD zoning has other impacts, such as the undersized culvert at Maple and Foothill, which has the potential to increase flooding at the southeast edge of Foothill. While these are not significant issues, he said, they

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need to be considered.

Commissioners thought the Architectural Review Board should look at the project as to the concerns of visual impacts.

Other items of interest for study include:

Sulfur odor resultant from chemical application (deemed not significant, but of concern of neighbors

Water tank for fire mitigation (30 feet diameter/30 feet high) not on hill or ridge, but placed on valley floor

Golf course: for private use only, with the number of rounds/day/time of play clearly identified

COMMISSIONERS ESCOBAR/ ENGLES MOTIONED TO CONTINUE THE DISCUSSION TO TUESDAY, JUNE 1, AT 7:00 P.M. THE MOTION CARRIED WITH THE AFFIRMATIVE VOTE OF ALL COMMISSIONERS PRESENT.

Chair Mueller remarked, "This may seem to be doing this backwards, but I'd much rather the Planning Commission err on the side of caution."

ADJOURNMENT:

The meeting was recessed at 11:32 p.m. to be resumed in accordance with the motion for continuation.

MINUTES RECORDED AND PREPARED BY:

JUDI H. JOHNSON, Minutes Clerk